

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	
)	CRIMINAL NO. 2004-0007
ERNIE RITTER, REGGY RITTER, and)	
DALE RITTER)	
)	
Defendants)	
_____)	

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on the motion of Defendant Ernie Ritter to suppress physical evidence and statements. Defendant asks the Court to suppress all physical evidence seized from Defendant's residence and statements allegedly made by Defendant Ernie Ritter to agents of the Government before and after his arrest on August 8, 2003. The Government opposes this motion. Defendant Reginald Ritter filed a motion to join Defendant Ernie Ritter's motion. On July 19, 2004, the Court held a hearing on this motion to suppress. At the hearing, Defendant Dale Ritter orally moved to join in Defendant Ernie Ritter's motion.

I. Background

On May 7, 2003, this Court issued a search warrant for "No known number New Street Frederiksted St. Croix U.S.V.I. further pictured on Attachment 'A'." (Search Warrant issued by

Magistrate Judge Resnick on May 7, 2003.) Pursuant to this search warrant, government agents searched #87 Mars Hill, Frederiksted, St. Croix, U.S.V.I. on August 8, 2003. (Defendant's Motion at 1.) At that time, the agents seized items including drugs and weapons. (Defendant's Motion at 1.)

Defendants have subsequently been indicted on conspiracy, drug possession, and drug manufacturing charges. (Indictment.) Additionally, Defendant Ernie Ritter has been indicted on firearm charges. (Indictment.) Defendants now move to suppress the physical evidence seized on August 8, 2003, for the reasons that the underlying search warrant was not supported by probable cause and that the search warrant was over-broad in failing to describe with particularity the place to be searched. Defendant Ernie Ritter further moves to suppress statements allegedly made by Defendant Ernie Ritter to Government agents and all other evidence derived from the improper search of the premises. Defendant Dale Ritter also moves to suppress items found in the oven and broiler of Defendant Dale Ritter's apartment, as well as items seized from his person, as outside the scope of the search warrant.

II. Analysis

A. Search Warrant Requires Probable Cause

Determining whether a search warrant is supported by the requisite probable cause was once dictated by the guidelines set forth in Aguilar v. Texas, 378 U.S. 108, 114, 84 S.Ct. 1509, 1513 (1964) and Spinelli v. United States, 393 U.S. 410, 415 - 416, 89 S.Ct. 584, 588 (1969). Id. at 847 (citing United States v. Armocida, 515 F.2d 29, 36 (3d Cir. 1975); United States v. Falcone, 505 F.2d 478, 481 (3d Cir. 1974); United States v. McNally, 473 F.2d 934 (3d Cir.

1973)). However, the Aguilar-Spinelli test has since been replaced by a “totality of the circumstances” approach under Illinois v. Gates, 462 U.S. 233, 103 S. Ct. 2317 (1983). Under the Gates approach, an informant’s “reliability” and “basis of knowledge” are still important considerations in determining whether probable cause is sufficient, but other circumstances must be taken into account as well. Id. at 233.

1. Corroboration of Anonymous Tips

An affidavit submitted by High Intensity Drug Trafficking Area (HIDTA) Task Force Officer Christopher Howell provided the basis for this Court’s issuance of the search warrant in question. (Search Warrant issued by Magistrate Judge Resnick on May 7, 2003.) The affidavit includes Officer Howell’s description of observing, while on aerial surveillance in August 2002, marijuana plants growing in a roofless horse stable near the main house on the property and Lionel Fawks tending to the plants. (Christopher M. Howell’s Affidavit in Support of Search Warrant at 2.) Officer Howell explains that law enforcement ground units then entered and destroyed the plants, finding other plants in a nearby field. (Christopher M. Howell’s Affidavit in Support of Search Warrant at 2.) The affidavit states that Lionel Fawks, who did not reside on the premises, admitted to growing the plants. (Christopher M. Howell’s Affidavit in Support of Search Warrant at 2 - 3.) The affidavit also alleges that an anonymous individual called HIDTA on April 29, 2003, to report that residents of the property were growing marijuana in the horse stable and adjacent field. (Christopher M. Howell’s Affidavit in Support of Search Warrant at 3.) Finally, the affidavit attests that on May 7, 2003, the anonymous caller informed HIDTA that s/he was told by a third party that marijuana was being cultivated in two rooms inside the house and that s/he had personally observed someone who lived at the house bringing plants into the

house on the previous day. (Christopher M. Howell's Affidavit in Support of Search Warrant at 3.)

Defendants argue that Officer Howell's affidavit provides no independent corroboration or indicia of reliability of the anonymous tips. (Defendant's Motion at 2 - 3.) At the hearing, Officer Howell admitted that he did not do anything to independently verify the reliability of the anonymous caller. Officer Howell explained that he had determined the anonymous tips were reliable based on his own air surveillance observation and law enforcement agents' subsequent discovery and destruction of marijuana being grown on the property. At the hearing, Officer Howell stated that the anonymous caller provided sufficient details that were corroborated by his own observation of marijuana plants previously being grown in the horse stable and field on the same property.

2. False Statements

Defendant Ernie Ritter accuses Officer Howell of deliberately making false statements in his affidavit regarding the information provided by the anonymous caller and the air surveillance. (Defendant's Memorandum at 3.) Defendant provided no support for these allegations in his motion, in his memorandum, or at the hearing.

3. Conclusion

The Third Circuit has reaffirmed that "after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of de novo review." Gates, 462 U.S. at 236, 103 S. Ct. at 2331. Deferring to this principle and applying the totality of the circumstances approach, the Court cannot find that the search warrant application was devoid of probable cause.

B. Search Warrant Requires Particularity of Place to be Searched

At the hearing, Defendants attacked the warrant as being over-broad for failing to describe the place to be searched with particularity. See, e.g. Horton v. California, 496 U.S. 128, 139 - 140, 110 S.Ct. 2301, 2309 (1990) (holding that a search warrant must particularly describe the place to be searched). Defendants argue that particularity was lacking in the instant case because the address on the search warrant was listed as “No known number New Street Frederiksted St. Croix U.S.V.I. further pictured on Attachment ‘A’.” The actual address of the premises searched is #87 Mars Hill, Frederiksted, St. Croix, U.S.V.I. However, an incorrect or omitted address does not automatically render a search warrant invalid. See U.S. v. Bonner, 808 F.2d 864 (1st Cir. 1986); U.S. v. Vega-Figueroa, 234 F.3d 744 (1st Cir. 2000). In this case, a picture was attached to Officer Howell’s affidavit so that there would be no confusion as to which building would be searched. Furthermore, Officer Howell testified that he himself participated in the search and decided who would do what during the search. Because Officer Howell had observed the building during air surveillance, he could ensure that the correct building was searched. Therefore, based on the description in the search warrant, there was no risk that the police officers would search the wrong *building*. See Bonner, 808 F.2d at 866; Vega-Figueroa, 234 F.3d at 756.

However, a windfall occurred in the instant case, when the building turned out to contain more than one residential unit. The police officers took advantage of this windfall by indiscriminately searching at least four different apartments in the building. For this reason, the search warrant failed to satisfy the particularity requirement for the place to be searched. Cf. Bonner, 808 F.2d at 866 - 67; Vega-Figueroa, 234 F.3d at 756. Officer Howell stated that based on his observation of the building during air surveillance, he had no reason to believe that it

contained multiple dwelling units before he applied for the search warrant. Officer Howell admitted that no investigation was ever conducted to determine whether the dwelling might contain multiple units. Officer Howell also admitted that after the entry team swept the premises, but before the search actually began, the police officers became aware that the building was a multi-unit dwelling. As soon as the police officers discovered that the building was comprised of multiple units upon the entry team's sweep, the police officers were on notice that they may be searching unit(s) inadvertently included in the search warrant. See Maryland v. Garrison, 480 U.S. 79, 86 - 87, 107 S.Ct. 1013, 1017 - 1018 (1987). Once the police officers realized the building was a multi-unit dwelling, the Court holds that the search warrant was defective for failing to specify which unit(s) were to be searched.

C. Good Faith Exception

The U.S. Supreme Court has created a good faith exception for police officers executing search warrants that are later found to be invalid. U.S. v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984). In executing a search warrant, if police officers reasonably relied on the Magistrate's determination that the search warrant was supported by probable cause and was technically sound, evidence found pursuant to the search should not be excluded. Id. at 922, 3420.

However, the Third Circuit has enumerated four situations in which the good faith exception would be inapplicable:

- (1) [when] the magistrate [judge] issued the warrant in reliance on a deliberately or recklessly false affidavit;
- (2) [when] the magistrate [judge] abandoned his judicial role and failed to perform his neutral and detached function;
- (3) [when] the warrant was based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'; or
- (4) [when] the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

U.S. v. Hodge, 246 F.3d 301, 308 (3d Cir. 2001) (citing U.S. v. Williams, 3 F.3d 69, 74 n. 4 (3d Cir. 1993) (citations omitted).) Defendant Dale Ritter argued at the hearing that situations (1), (3), and (4) apply to the instant case. With regard to situation (1), the Court has been presented with no evidence that Officer Howell's affidavit was deliberately or recklessly false. As for situation (3), the Court has already determined that the search warrant was supported by probable cause.

Regarding situation (4), the Court has found that the search warrant failed to particularize the place to be searched because there was no indication which unit(s) were to be searched. The Court contends that the search warrant was facially deficient on account of this failure. When the police officers realized that there were multiple dwelling units and the search warrant gave them no guidance as to which unit(s) were intended to be searched, the police officers could not be said to have been executing the warrant in good faith by subsequently searching at least four different residential units. Accordingly, the Court concludes that the good faith exception does not apply.

D. Scope of Search

At the hearing, Defendant Dale Ritter argued that police officers exceeded the scope of the search warrant by looking inside the oven and broiler in his apartment. This issue is moot since the Court has determined that the entire search was unlawful.

E. Pat Down of Defendant Dale Ritter

Defendant Dale Ritter also claimed that it was improper for police officers to pat him down and that the marijuana seized from his pocket during the pat-down should therefore be suppressed. In Ybarra v. Illinois, 444 U.S. 85, 92 - 93, 100 S.Ct. 338, 343 (1979), the U.S.

Supreme Court held that police officers were not justified in frisking a person found on the premises during the execution of a search warrant because the Government had presented no facts to support the contention that police officers had reasonable suspicion to believe that the person was armed and dangerous. Similarly, in the instant case, the Government has not provided any evidence that would allow this Court to conclude that the police officer(s) who patted down Defendant Dale Ritter when the search warrant was executed, had any reason to believe that Defendant Ritter was armed and dangerous. Accordingly, the evidence seized from Defendant Dale Ritter's person on August 8, 2003, is not admissible.

III. Conclusion

Considering the totality of the circumstances, the search warrant in this case was supported by probable cause. Nonetheless, the search warrant was defective because it failed to sufficiently describe the place to be searched by not indicating which of the different residential unit(s) in the building were to be searched. Furthermore, the good faith exception is inapplicable for the reason that the warrant was facially deficient in not describing the place to be searched with particularity. Finally, police officer(s) were not justified in conducting a pat down for weapons on Defendant Dale Ritter, as no evidence has been presented that there was reason for police officer(s) to believe he was armed and dangerous. An appropriate Order is attached.

ENTER:

Dated: July 20, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By:

Deputy Clerk

cc: Hon. George W. Cannon
Bruce Z. Marshack, AUSA
Kirsten Getty Downs, Asst. Federal Public Defender
Jomo Meade, Esq.
Martial A. Webster, Esq.

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DALE RITTER)	
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Defendants)	
_____)	

ORDER

This matter comes before the Court on Defendant Ernie Ritter's Motion to Suppress, docket item #35. The motion is joined by Defendants Reggy Ritter and Dale Ritter. In accordance with the attached Memorandum Opinion, it is hereby **ORDERED** that Defendants' Motion to Suppress is **GRANTED**. It is further

ORDERED that any physical evidence seized or statements obtained in connection with the execution of the search warrant for "No known number New Street Frederiksted St. Croix U.S.V.I. further pictured on Attachment 'A'" on August 8, 2003, shall be and is hereby **EXCLUDED** as evidence.

ENTER:

Dated: July 20, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. George W. Cannon
Bruce Z. Marshack, AUSA
Kirsten Getty Downs, Asst. Federal Public Defender
Jomo Meade, Esq.
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